

Peter J. Wallison

1/31/94

Iran-Contra: The Butlers Did It

Now that Independent Counsel Lawrence Walsh has issued his report, it is possible to make a critical assessment of his conclusions. I was counsel to the president at the time the Iran-contra story broke and a participant in the events Walsh interprets. Based on my experience during this period, Walsh has diminished himself and his office by advancing a dramatic but ultimately false version of what occurred.

The most bizarre aspect of Walsh's report—and the one, naturally, most readily seized upon by critics of the Reagan administration—was his suggestion that top officials of the administration conspired to cover up the president's knowledge of the arms sales to Iran in the fall of 1985. The foundation of Walsh's theory is that these advisers feared the sales were made in violation of the Arms Export Control Act and tried to cover up the president's knowledge in order to avoid his impeachment. A corollary of this idea was Walsh's claim that these same officials tried to make various lower level figures—principally John Poindexter and Oliver North—the scapegoats for what was done.

This conclusion reflects a gross misunderstanding of events. There was in fact a coverup, but not by the president's top advisers. Indeed, given the innuendo spun by the Walsh report, they were its principal victims.

It is true that a strong argument could be made that the shipment of arms to Iran in September and November 1985 might have been inconsistent with the Arms Export Control Act. The opposite could be argued as well, but there is no question that if the president had made a "finding" that the shipments were undertaken for a covert intelligence or foreign policy purpose, and reported that finding to Congress, the sales would have been legal. There also are strong arguments that the law permitted the president—in extraordinary circumstances—not to report his finding contemporaneously to Congress. In fact, Walsh does not question the legality of the shipments made after the president's finding in January 1986. The specifics here are important, because Walsh's allegation of coverup rests entirely on the idea that there was a fear among the president's top advisers in November 1986 that the president might be impeached for failure to observe the technicalities of the law in connection with the 1985 arms sales.

I, for one, was skeptical about the legality of the arms shipments made in September and November 1985, before the president's finding. Unfortunately, however, it was difficult for a conscientious person to draw any conclusions concerning legality because the facts were withheld and distorted by those who could have supplied them. This, in anyone's book, would constitute a "coverup," but it was not the dramatic and headline-grabbing affair that sprang from Walsh's imagination. It was instead the garden variety self-protection of a staff that had failed to do its homework, had failed to read the law and had to put before the president a highly controversial policy decision without attempting to ascertain its legal foundation or advise him of the legal pitfalls.

To protect itself, one or another of this group—identified in the Walsh report as John Poindexter, Oliver North and Robert McFarlane—prepared a false chronology of events, misled those who inquired, concocted reasons why it would be inadvisable or dangerous to the hostages to dig too deeply into the facts and generally obstructed the

efforts of those who sought to determine what had happened. The National Security Council's records were so poor that no one was ever able to determine with certainty whether the president had actually approved the first sale of TOW missiles in September 1985. The facts concerning the Hawk shipment in November of that year were even more obscure. The NSC staff's first version, which was told to me by Poindexter himself, was that the Israelis had sent the Hawks to Iran on their own, and the president had ordered the return of the missiles when he found out. That story was changed in subsequent versions of the false chronology. Information, of doubtful accuracy in any event, was doled out so sparingly to those who inquired that the Navy lawyer serving as counsel to the National Security Council simply refused, on what he said were Poindexter's directions, to tell me or the general counsels of the State Department, the Defense Department and the CIA what had actually happened.

By Nov. 24, 1986, the day on which Walsh asserts a conspiracy was "signaled" among the president's top advisers, these advisers—relying on responses to their questions that were likely to have been false or misleading—were probably as confused about the facts concerning these early shipments as anyone else. In fact, it was precisely this confusion that had led the president, three days earlier, to direct Ed Meese to conduct an investigation. In this inquiry, the so-called diversion memo was discovered, and North and Poindexter were compelled to resign.

Thereafter, things changed dramatically and information began to flow. The president appointed the Tower Board, the attorney general recommended the appointment of an independent counsel, and the president waived executive privilege and authorized the production of documents, including his personal diaries, to all inquiries. Shortly thereafter, chief of staff Donald Regan, one of the alleged "conspirators," testified to Senate and House committees concerning the president's knowledge of the early arms shipments. In an ironic twist, the outcome of all this is a report by Lawrence Walsh accusing the president's top advisers of an attempted

coverup and of an effort to treat as scapegoats the very subordinates who had distorted the record in order to cover their own mistakes. Thus, far from devising a plan to make certain underlings the scapegoats for an illegal action, the secretaries of state and defense, the attorney general, the chief of staff and the president himself were the victims not only of a coverup by their subordinates but of an effort by Lawrence Walsh to place a dramatic and false interpretation on their efforts to piece together the truth.

An example of this is Walsh's effort to construct a motive for a coverup involving these same top officials, several of whom strongly opposed the arms sales in the first place. The device he uses is the notion that in November 1986 these officials thought the president would be impeached if it turned out that he had authorized illegal arms sales. This explanation is absurd. It might be different, of course, if the president had knowingly violated the law. But it is clear that at the time the arms shipments were made—in September and November 1985—the president had never been told by the NSC staff that there was any legal question about his

authority to sell arms to Iran or that a finding might be necessary to bring these sales within the law.

In other words, for Walsh's theory to ring true, the president's senior advisers—several of whom had long experience in the ways of Washington—would have had to believe that the president would be impeached for failing to recognize that a finding was required before he could authorize arms sales to Iran. To state the proposition is to refute it. The president of the United States is entitled to

Lawrence Walsh has advanced a dramatic but false version of what occurred.

assume the legality of a policy initiative brought to him by his advisers; he is certainly not responsible for knowing that if he makes a particular decision he must report it to Congress. For technical matters of this kind, a president relies on his staff—in this case, the National Security Council staff. Neither the American people nor a Democratic Congress would have seriously contemplated the impeachment of this or any other president simply because he did not recognize that arms shipments to Iran were not legal unless certain ambiguous technical requirements were met. If the rule were otherwise, presidents would be requiring written legal opinions before taking any significant action.

None of the lawyers in the administration—at the Justice Department, the State Department, the Defense Department, the CIA or the White House—was ever asked, before the fact, whether arms could be sold to Iran without a finding. None was asked because the NSC staff operated secretly as a matter of habit and policy, and because it never occurred to this staff that a legal issue might be involved.

Thus, when it became clear that the president's decision might have been legally questionable, it was not the president or the presidency that was at risk—it was the careers of the NSC staffers who proposed the arms sales, obtained the president's approval and carried them out, all without any effort to consult or comply with applicable law.

The real motive for the ensuing coverup, then, was not to save the president by denying his knowledge—he readily admitted his knowledge—it was to protect the reputations of the top National Security Council staffers who got the president into this position to begin with. And most certainly it was not George Shultz or Caspar Weinberger or Don Regan or Ed Meese who carried on the coverup; it was those who withheld the facts even from the president's principal advisers in order to protect themselves.

Some press reports have noted that I was displeased with the president's statement on Nov. 13 that in the arms sales to Iran "no laws were broken." This is true, but not because I had concluded the contrary. I could not then get access to the facts that would have permitted such a conclusion. I was displeased because a hasty statement of that kind, if eventually found to be inaccurate, could ultimately lead to self-justification and coverup. If the arms shipments in September and November 1985 were illegal, the error was not the president's, and he would only suffer from it if he allowed his staff to use him for their own protection.

The dynamics of the bureaucratic coverup are so familiar to people who have been in government that one wonders why this particularly egregious case was not immediately recognized by Congress, the press and our legions of supposed insiders and pundits. That is probably a story yet to be told, but I have this suggestion: An explanation as simple as this would not have sold newspapers, excited columnists and commentators to superheated rhetoric about constitutional crises (a good deal of which nonsense has been published since the Walsh report) or justified a \$40 million extravaganza styled as an independent counsel's investigation. Once again, in the era of Infotainment, the simple truth was not enough.

The writer was counsel to President Reagan during the Iran-contra controversy.